

## **II. REMARKS**

Applicants gratefully acknowledge that the Examiner has determined claims 5-8 and 12 contain allowable subject matter (Office Action, dated August 3, 2009, at 2, lines 22-25).

By the present amendment, claims 1, 3, 12 and 13 have been amended, and new claims 14-16 have been added. More specifically, independent claim 1 has been amended to incorporate the subject matter of dependent claim 7. Therefore, claim 1 now has the same scope as previous claim 7. Claim 3 has been amended to improve grammar and clarity. The present amendment to claim 3 has no further limiting effect on claim 3. Claim 12 has been amended to depend upon claim 2. Claim 13 has been amended to recite “wherein the inorganic component of the powder bone material is selected from one or more of calcium phosphate, chondroitin sulfate, hyaluronic acid, collagen, pluteogulycan, glycosaminoglycan, deltamane sulfate, heparin sulfate and ketarane sulfate” as supported on page 17, lines 9-27, of Applicants’ specification as originally filed.

New independent claim 14 incorporates subject matter from previous claims 1, 4 and 5. In fact, new claim 14 corresponds to previous claim 5 rewritten in independent form and, therefore, has the same scope as previous claim 5.

New independent claim 15 incorporates subject matter from previous claims 1, 4 and 6. In fact, new claim 15 corresponds to previous claim 6 rewritten in independent form and, therefore, has the same scope as previous claim 6.

New claim 16 incorporates subject matter from previous claims 1 and 8.

The present amendment adds no new matter to the above captioned application.

**A. The Rejections**

Claims 3 and 13 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite.

Claims 1-4 and 13 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Abe et al. (U.S. Patent Application Publication No. US 2003/0042641, hereafter the “Abe Publication”).

Applicants respectfully traverse the Examiner’s rejections and request reconsideration of the above-captioned application for the following reasons.

**B. Applicants’ Arguments**

In view of the present amendment, claims 1-6, 8 and 12-16 are in compliance with 35 U.S.C. § 112.

**i. The Section 102 Rejection**

Anticipation under 35 U.S.C. § 102 requires showing the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984). In this case, the Examiner has failed to establish a prima facie case of anticipation against claims 1-6, 8 and 12-16 for the following reasons.

Independent claims 1 and 14-16 now each contain subject matter that the Examiner concedes is allowable (Office Action, dated August 3, 2009, at 32 lines 22-25). Therefore, independent claims 1 and 14-16 are allowable for the reasons of record. Claims 2-6, 8, 12 and 13 all depend directly or indirectly upon independent claim 1 and are, therefore, likewise allowable for the reasons of record.

### III. CONCLUSION

Claims 1-6, 8 and 12-16 are in compliance with 35 U.S.C. § 112. Furthermore, independent claims 1 and 14-16 each recite subject matter that the Examiner has determined is allowable. Therefore, claims 1 and 14-16 are in condition for allowance for the reasons of records. Consequently, claims 2-6, 8, 12 and 13, which all depend either directly or indirectly upon claim 1, are likewise in condition for allowance.

For all of the above reasons, claims 1-6, 8 and 12-16 are in condition for allowance and a prompt notice of allowance is earnestly solicited.

Questions are welcomed by the below-signed attorney for Applicants.

Respectfully submitted,

*GRIFFIN & SZIPL, P.C.*



---

Joerg-Uwe Szimpl  
Registration No. 31,799

GRIFFIN & SZIPL, P.C.  
Suite PH-1  
2300 Ninth Street, South  
Arlington, VA 22204

Telephone: (703) 979-5700  
Facsimile: (703) 979-7429  
Email: gands@szipl.com  
Customer No.: 24203